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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN Docket No. 90-314

REPLY

MCI Telecommunications Corporation (MCI), by its attorneys, hereby submits this reply to oppositions filed in the reconsideration phase of the above-captioned proceeding. The principal issue addressed in this reply is one which is of vital importance to the emergence of a vibrantly competitive PCS industry, namely, the adoption of a revised eligibility rule to ensure that those carriers which already dominate the cellular spectrum do not extend their dominion over the spectrum allocated to PCS, to the detriment of competition and consumers.

I. MCI's Request To Further Limit PCS Eligibility Of The Nine Largest Cellular Carriers Should Be Granted.

In its Petition for Reconsideration, MCI urged the Commission to modify the cellular eligibility rule to make the nine largest cellular carriers, which dominate the cellular market, ineligible to bid on one of the 30 MHz PCS blocks. MCI's petition was supported by a statement authored by Dr. Daniel Kelley of Hatfield Associates, Inc.

Some parties dispute Dr. Kelley's finding that the cellular market "is not competi-

tive."[1/] In particular, CTIA (p. 4) and GTE (p. 5), label Dr. Kelley's finding as "conclusory." Dr. Kelley's conclusions are based on a detailed economic analysis of the cellular market. His analysis uses the standard structure, conduct, and performance paradigm of Industrial Organization, the branch of economics that deals with markets and market power.

Dr. Kelley did not include his entire analysis of the cellular market structure in the paper filed by MCI in this proceeding. The conclusion that cellular is not competitive relies on an earlier paper authored by Dr. Kelley and submitted by MCI as an ex parte presentation in this docket. That earlier paper, "An Efficient Market Structure for Personal Communications Services," filed September 13, 1993, was referenced in Dr. Kelley's statement accompanying MCI's petition for reconsideration. Section III of the September 13, 1993 paper, pp. 6-19, contain the detailed structure, conduct, and performance analysis on which Dr. Kelley's conclusion is based.[2/]

In any event, Dr. Kelley is not the first — and certainly not the only — person to reach the conclusion that the cellular market lacks competition. The General Accounting Office and the U.S. Department of Justice have recently reached similar conclusions.[3/] The

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[1/] Kelley statement p. 7.

[2/] The analysis in the September 13, 1993 paper is in turn based on an Affidavit submitted by Dr. Kelley in U.S. v. Western Electric. That Affidavit responds in detail to claims about competition in the cellular industry made by the RBOCs. Although the RBOCs had an opportunity to respond to Dr. Kelley's Affidavit, they chose not to.

[3/] General Accounting Office, Report to Hon. Henry Reid, U.S. Senate, Concerns About Competition in the Cellular Telephone Service Industry, 1992. See also "GAO Witness Tells California Senate Panel That Cellular Duopoly Inhibits Competition," Telecommunications Reports, January 18, 1993, p. 17. The Department of Justice cited these findings in its comments supporting development of Personal Communications Networks. See U.S. Department of Justice, Reply Comments, December 9, 1992, pp. 6-7.

Commission, in its most recent review of the state of competition in the cellular service market, echoed the Department of Justice's conclusion:

> ...[W]e agree with the DOJ that in the absence of any evidence (such as price and cost data), it is difficult to conclude that the cellular service market is fully competitive.[4/]

CTIA argues that "cellular services perform competitively," citing a Charles River Associates paper that finds that "the business of supplying cellular telephone communications has been characterized by rapidly increasing volume, declining prices, expanded service offerings, and significant technological change."[5/] Dr. Kelley's September paper shows that each of these performance indicators is consistent with the presence of market power. For example, the profit maximizing price of a monopolist will fall as costs fall due to technological change.[6/] Finally, CTIA argues that if cellular carriers are excluded from PCS spectrum, consumers will be denied the benefits of economies. However, cellular carriers are not the only firms with access to economies. Long distance companies and cable companies can also capture scope economies.

At page 7 of its opposition, CTIA states:

> MCI's claim that the wireless services market has "'national characteristics,'" and that the largest cellular providers have a pattern of joint planning and cooperation to the detriment of local competition also misses the point.

It is CTIA — not MCI — which misses the point, apparently as a result of the sensitivity it

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[4/] Bundling of Cellular Customer Premises Equipment and Cellular Service, CC Docket No. 91-34, Report and Order, 7 FCC Rcd 4028, 4029 (1992).

[5/] Besen et al, Charles River Associates, "The Cellular Service Industry: Performance and Competition," January 1, 1993.

[6/] September 13 paper, p. 15.

feels towards the local competition issue. MCI and Dr. Kelley demonstrated that the nationwide structure of the cellular market does matter. If this were not true, then the existing cellular companies would not be forming marketing consortia such as Cellular One and MobiLink.

MCI is not seeking to exclude cellular companies from the so-called "mobile telecommunications services marketplace." That would be impossible because the cellular carriers are already in it. Indeed, today they are virtually the only players in that market.[7/] MCI's point is that marketplace diversity would be fostered by allowing carriers who are not in the market today to participate, bringing fresh ideas and technical and marketing approaches to a "club" of sorts that is dominated by eight large telephone companies and AT&T, the former parent of, and a current large supplier to, seven of them.

The new Charles River Associates study by Drs. Besen and Burnett also misses the point.[8/] It may be true, as they argue, that under some scenarios, the Justice Department might not move to block mergers among PCS providers in hypothetical mobile markets of the future, but the Commission's job in designing PCS auctions is not to enforce the Merger Guidelines. The Commission has a unique opportunity to promote the most competitive PCS

[7/] As reflected in numerous marketing surveys and focus groups conducted by MCI and others, there is an enormous pent-up demand for higher quality, more affordable service than is currently being provided by cellular. The "testimony" of the marketplace, including a representative cross-section of millions of cellular subscribers, clearly contradicts the industry's assertion that the existing cellular service market is "highly competitive." The cellular industry's track record of seeking to impede the introduction of broadband PCS competition is indicative of a deep-seated fear that cellular customers, given a meaningful choice, would "vote with their feet."

[8/] Stanley M. Besen and William B. Burnett, "An Antitrust Analysis of the Market for Mobile Telecommunications Services," December 8, 1993.

market possible. As Drs. Besen and Burnett well know, Section 7 of the Clayton Act, which is the statute that the Merger Guidelines are intended to help enforce, is designed to prevent markets from becoming concentrated through merger. The maximum possible diversity of local and nationwide competitors will promote mobile telephone competition. (Drs. Besen and Burnett ignore the national dimension of the PCS licensing issue by focusing entirely on local markets.)

CTIA, at p. 8, asserts that "MCI also fails to support a claim that the top nine could collude to block a national market." A similar assertion is made by McCaw at p. 21. CTIA's claim that collusion is unlikely in the "mobile telecommunications services marketplace" once again misses the mark. Whether or not collusion is likely in some mobile service market is irrelevant to the point that MCI made. MCI's original point addressed the desirability of screening the identity of bidders in the PCS auction in order to prevent individual cellular carriers from holding up an effort by non-cellular firms to consolidate a block of licenses to compete with existing nationwide (or regional) cellular alliances. It is simple logic that, in an oral auction with bidder identities known, a cellular carrier that is part of an existing cellular brand alliance or national consortium would have an incentive to bid more for a license for which a consortium competitor is not the current high bidder than it would if an existing consortium member were the current high bidder. Seen in this light, the passage quoted by CTIA from the earlier study by Dr. Kelley, supports, and does not refute, MCI's position.

CTIA, at p. 9, says "Surely MCI does not suggest that only the top nine cellular operators have excellent debt ratings." While neither MCI nor anyone else can predict who

will bid at PCS spectrum auctions, the top nine cellular operators (counting AT&T/McCAW as a single entity) do indeed have the highest debt ratings among current telecommunications firms that are likely to bid for PCS licenses.

McCaw, at p. 8, argues that it has no market power because it only has five percent market penetration. Low market penetration may be a function of high cellular service prices. In any event, in the markets McCaw serves, it likely has approximately 50 percent of the subscribers.

McCaw, at p. 12, asserts that "Interexchange carriers like MCI have facilities that will be essential to many PCS configurations." The only example of MCI's "essential facilities" cited by McCaw is "network planning and deployment capabilities." In the same sentence, McCaw undercuts its own claim by acknowledging that such "essential facilities" are not unique to MCI in particular or to interexchange carriers as a class, but that are possessed by "many other types of carriers." MCI has no essential facilities. Unlike cellular and local telephone markets, the long distance market is competitive.

II. Other Issues.

Interference. Apple Computer, Inc. (Apple) at 4-5 claims that a two watt EIRP limitation on all licensed emitters operating within five MHz on either side of the unlicensed band is necessary "to prevent the obliteration of communications by unlicensed devices in many situations." Apple presents no data or analysis to support its sweeping conclusion, and Apple fails to address the potential impact of its proposed power limit on operation in the adjacent licensed bands. Assuming the adoption of an uplink/downlink channel designation

scheme as proposed by several parties, the addition of 5 MHz "guardbands" as proposed by Apple would significantly limit the usefulness (and, therefore, the value) of the adjacent bands. Within five MHz on the one side of the unlicensed band, operation of higher-power mobile or portable devices would be prevented; within five MHz on the other side, all normal base station operation would be prevented by the two watt limit. Finally, Apple's proposal, is fundamentally at odds with the philosophy of Part 15: i.e., that the operator of an unlicensed devices must accept interference from — and avoid causing interference to — the operation of licensed devices. See, e.g., 47 CFR § 15.5(b). For these reasons, Apple's request must be denied, and the Commission should clarify that operators of devices in the unlicensed PCS band are subject to the same general rules that apply in all other spectrum subject to Part 15.

Transmitter Power Limits. Nextel, at 14-15, urges the Commission to retain the base station power limits adopted in the Report and Order, asserting that giving licensees the flexibility to deploy higher power transmitters would cause "the powerful vision of...micro-cellular PCS...[to] evaporate." Nextel (formerly Fleet Call) built its business only by convincing the Commission that SMR licensees need flexibility to deploy SMR systems which do not conform to the Commission's original "big-stick, high-power" vision of SMRS. now seeks to hobble potential PCS entrants. The Commission must reject Nextel's blatant effort to exploit the advantage it enjoys as an incumbent licensee.

Some incumbent Operational Fixed Service (OFS) microwave users state that they do not oppose higher power limits for PCS, but seek to establish a linkage between higher PCS power limits and tangentially related issues raised in their own reconsideration requests.

These include the adoption of mandatory third-party interference coordination between PCS and OFS (API at 3-5) and the imposition of specific penalties for interference (UTC at 14-16). MCI is on record as opposing the petitioners' proposals which, in general, would subject PCS entrants to additional costs and implementation delays without any commensurate reduction in PCS-to-OFS interference. Assuming that appropriate adjustments are made to the interference protection criteria to reflect the increase in power levels, good faith compliance by all concerned will afford adequate protection, and there is no need to adopt additional costly or punitive measures being advocated by some OFS interests.

Standards. Some parties commenting on proposals to make compliance with an industry standard Common Air Interface (CAI) standard a precondition to type acceptance of PCS equipment suggest that the Commission should foster efforts to adopt a single uniform CAI standard at an early date. Among the purported benefits of such a policy are the increased value of PCS services, "since interoperability and "seamless" service capabilities will be made possible." API at 9. MCI, which has been one of the principal proponents of interoperability and seamless service throughout this proceeding, offers the following observations on this issue:

1) The record evidence in both existing and emerging services (including cellular, SMR and both licensed and unlicensed PCS) strongly suggests that it is highly unlikely that any single no one "uniform" CAI standard would ever emerge through a consensus process. Divergence in service provider "visions" and in user requirements both militate against such an outcome.

2) Even in those instances where the Commission did mandate a single uniform CAI standard (e.g., the original cellular AMPS standard), interoperability and seamless services have not been assured. In fact, the cellular industry is still, after ten years, still in the process of deploying an intersystem signaling network, based on the IS-41 standard protocol, needed to support what some would classify as rudimentary forms of "interoperability."

3) Adherence to a single uniform CAI is not always necessary permit devices to interoperate or to offer services that are "seamless." The necessary translations can be performed elsewhere in the "network of networks." To take a simple example, a notebook computer equipped with a wireless fax/modem (whether the air interface is analog AMPs, CDPD or a proprietary standard) can communicate through appropriately equipped base stations and interconnected networks with any wired or wireless fax device anywhere in the world.

In summary, it is neither necessary nor appropriate — at this late stage of the PCS proceeding — for the Commission to abandon its flexible approach to PCS technology, an approach similar to the one it has adopted for other wireless services, including cellular and SMR/ESMR, in recent years. Deployment of PCS should not, under any circumstances, be delayed pending (or conditioned upon) the development of a uniform CAI standard.

CONCLUSION

WHEREFORE, MCI reiterates its request that the Commission, upon reconsideration, revise its PCS rules in accordance with the recommendations contained in MCI's December 8, 1993 petition, as supplemented by MCI's January 3, 1994, opposition and by this reply.

Respectfully submitted,

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Dated: January 13, 1994

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I, Vernell V. Garey, hereby certify that copies of the foregoing **"REPLY "** in GEN DOCKET No. 90-314 were mailed first-class, postage prepaid, to the following on this 13th day of January 1994.

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